

A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See 86 Ill. Adm. Code 130.310. (This is a GIL).

September 24, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated September 1, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are a retail grocery and drug concern with several outlets in the state of Illinois, and we maintain a very extensive inventory of items that we sell to the general public. The purpose for writing is to obtain a Legal or Advisory Opinion from the State of Illinois regarding the rate of tax for a number of different items that we sell.

Even though we have reviewed the state statutes, regulations, medical appliance list, and several letter rulings, as well as other state publications, we still feel it is necessary to obtain a legal opinion on the items in question. Please provide an opinion for the following items:

- 1) Flavored Water (non-carbonated)
- 2) Soft Drink Bottle Deposit
- 3) Deep Heating Rub
- 4) Epsom Salt for Medical Use
- 5) Food Producing Plants
- 6) Food Producing Seeds
- 7) Sleep Aids
- 8) Teething Lotion

Additionally, we would respectfully ask for greater clarification of the regulation that governs the rate of tax for non-prescription medicines. In section 130.310(d), the phrase 'which purports on the label to have medicinal qualities' is used. Does this mean that the label must directly state the words 'medicated' or 'medicine' in order to qualify for the low rate of tax? In the state's view, does words such as 'relief', 'relieves', 'reliever', 'helps heal' or 'aids' purport that the product has medicinal qualities? Does the verbiage

on the label only need to give the consumer confidence that the product has medicinal qualities, or serves a medicinal purpose? How does a known drug or healing agent listed in the ingredient section of the label, affect the medicinal claim?

There are two examples that make it difficult to know whether the lower rate of tax should be charged or if the higher rate of tax is required. First, the product known as 'Carmex' says on the label that the product is 'for cold sores, fever blisters and chapped lips'. And the second is Chapstick, which states on one of their products that it 'helps heal and prevent dry, chapped lips'.

To an average reasonable thinking consumer, both of these products will improve their condition with usage, even though they communicate the concept in different ways. Both statements imply that their products have medicinal qualities. If these products didn't have medicinal qualities, why would the manufacturers say that their products are 'for' something that requires a healing agent, or will 'help' in the healing process? Furthermore, if the products didn't have medicinal qualities, why does the customer continue to rely upon them for relief?

It appears obvious to me that the consumer, through personal experience, has faith that these two products will cure, heal, or relieve them from their affliction, even though the word medicated is not included on the label. And the manufacturers will continue to manufacture the items because the demand for these products will continue to exist, so long as they continue to perform as they claim.

If these products don't qualify for the lower rate of tax, then we have to assume that cold sores, fever blisters and chapped lips, don't really constitute a human aliment. Then if this is the case, where is the line drawn on what constitutes a human aliment and what is considered something else?

Please clarify in the clearest possible way what label terminology is sufficient to allow for a lower tax rate, and what terminology requires the imposition of the higher tax rate.

We appreciate your efforts in responding to our request. Our industry can be very difficult in terms of 'item taxability' so your help is greatly needed.

If you need to contact me for additional information, please feel free to do so. Thank you for your assistance.

In the context of a General Information Letter, we are unable to rule on the taxability of the various products you described in your letter. For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.310, which is the

Department's regulation for "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sale of food and drugs can be subject to either low (1%) or high (6.25%) State tax rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

As you can see, Section 130.310 provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See Section 130.310(b)(1). A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See Section 130.310(c)(1). Each product and label need to be evaluated on its own merit to determine whether it is a medicine or drug that qualifies for the low rate.

Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310 (b)(5).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel